

REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

Claims 10, 15-19 and 26 have been canceled in this paper. Claims 1, 11 and 24 have been amended in this paper. Therefore, claims 1-6, 11-14 and 24-25 are pending and are under active consideration.

Claims 15-18 stand rejected under 35 U.S.C. 102(b) "as being clearly anticipated by Lantz ('017)" and stand rejected under 35 U.S.C. 102(e) "as being clearly anticipated by Lantz ('764)."

Without acquiescing in the propriety of the rejection, Applicant notes that claims 15-18 have been canceled in this paper. Therefore, the rejection is moot and should be withdrawn.

Claims 1-6, 10-14, 19 and 24-26 stand rejected under 35 U.S.C. 103(a) "as being unpatentable over Grogan in view of Lantz ('017) or Lantz ('764)." In support of the rejection, the Patent Office states the following:

Grogan discloses the invention except for the bag integrally bonded to the foamed polymer body. Either Lantz reference teaches integrally bonding a bag to a foamed polymer bag. When the Lantz bag is in the final, installed configuration shown in Figs. 1-6 (covering the outer surface of the side wall, the upper edge, the inner surface of the side wall and the inner bottom of the body), the bag is integrally bonded to the body and the bag has a generally uniform width over its entire length from said open end (at the top of Fig. 1 and 2) to said closed end (at the bottom of Fig. 1 and 2). Even though the Lantz bag before being installed on the body and when laid flat (as shown in Fig. 11a and 12) was tapered, in the final, installed configuration it is closely adhered to the outer side wall surface of the body such that it has a uniform width. It would have been obvious to add the integrally bonded bag to the foamed body in order to make the foamed polymer insulation easily separable from the boxes of the invention.

For claim 13, polyethylene and hexene bag materials would have been obvious by design choice.

For claim 14, it would have been obvious to replace the flaps on the inner box with a closure member which fits by plugging the open top end and being removably disposed within the open top end.

For claims 24 and 25, the step of providing an elongated plastic bag having a uniform width is met when considering the final, installed configuration of the bag. The height or length of the bag in this installed configuration is greater than the bag's width and depth.

For claim 24, it would have been obvious to secure a torn elongated plastic bag to the corrugated fiberboard box in order to prevent the bag from being separated from the box so that the box will always protect the bag from further puncture and the box will always have the polymer foam insulation attached to keep the box thermally insulated. Note that the outer box still remains separable.

Insofar as the foregoing rejection pertains to claims 10, 19 and 26, the rejection is moot in view of Applicant's cancellation herein of claims 10, 19 and 26. Insofar as the foregoing rejection pertains to claims 1-6, 11-14 and 24-25, Applicant respectfully traverses the foregoing rejection.

As best understood, the foregoing rejection appears to be predicated on the Patent Office's contention that one may properly regard the open end of the claimed flexible, un-foamed polymer bag as the top end of the insert of Figs. 1 and 2 of Lantz (or as the top end of insert 31 of the present application) and that one may properly regard the closed end of the claimed flexible, un-foamed polymer bag as the bottom end of the insert of Figs. 1 and 2 of Lantz (or as the bottom end of insert 31 of the present invention). In addition, based on such an interpretation of what is meant by the open and closed ends of the claimed flexible, un-foamed polymer bag, the Patent Office is apparently contending that the bag of Lantz has a generally uniform width over its entire length since the width of the entire insert is generally uniform from the top end of the insert to the bottom end of the insert.

Applicant respectfully submits that such a reading of the claim language at hand is error. The claim clearly recites that it is the width of the **flexible, un-foamed, polymer bag**, not the width of the **entire insert**, that is at issue. There is no reason why one of ordinary skill in the art, reading the claims in view of the present specification, would regard the closed end of the claimed bag as being synonymous with the bottom end of the insert and would regard the open end of the bag as the top end of the insert. The fact that the claimed bag is used to make the claimed insert does not mean that structural terms used to describe the bag somehow become inextricably merged with any discussion of the insert as a whole. Moreover, such a reading of the claim language is contrary to the plain meaning of the language at hand and completely disregards the fact that the bag does not terminate at the top end of the foamed polymer body, but rather, continues beyond the top end of the foamed body to cover the prismatic cavity of the foamed polymer body.

Furthermore, reading the claim language in the manner proposed by the Patent Office conflicts with claim 11 of the present application, which recites that the flexible, un-foamed polymer bag is a unitary member having a transverse seam at said closed end thereof and a pair of longitudinal creases extending from opposite ends of said transverse seam. In view of the fact that the bottom end of the insert of the present application is not even covered by the claimed bag and that the transverse seam in question is located in the present invention at the bottom of the prismatic cavity, the meaning ascribed to these terms by the Patent Office cannot be proper.

In view of the above, whereas the flexible, un-foamed polymer bag of claim 1 is said to have a generally uniform width over its length from its open end to its closed end, said width being approximately equal to the outer dimension of the foamed polymer body, the bag of Lantz is clearly not uniform in width over its length from its open end to its closed end, but rather, tapers over a

substantial portion of its width. In fact, said tapering of the width of the Lantz bag is a principal teaching of Lantz. More specifically, Lantz teaches that folds and fissures resulting from the use of a bunched plastic sheet adversely affects the insulating properties of an insulated shipping container and that the substantially complete elimination of such folds and fissures is essential to the production of a reliable insulated shipping container. By contrast, Applicant unexpectedly found that, by using the claimed bag, as opposed to the Lantz bag, one could still produce a reliable insulated shipping container. In other words, Applicant found that, using the claimed bag, the number and nature of folds and fissures produced did not appreciably detract from the functionality of the insulated shipping container. Such a discovery is clearly contrary to the teachings of Lantz. Consequently, one of ordinary skill in the art would have had no reason to use a uniform bag if one wished to produce a satisfactory insulated shipping container.

Claim 1 is further patentable over the applied combination of references for the reason that the references, taken individually or in combination, do not teach or suggest, having the outer box in direct contact with the claimed foamed body and the claimed un-foamed bag and having the inner box in direct contact with claimed un-foamed bag.

The insulated shipping container made according to the method recited in claim 24 is also not taught or suggested by the applied combination of references for at least the same reasons relating to the claimed width of the claimed elongated plastic bag. The Patent Office has stated a theory as to why it believes it may be obvious to secure the torn bag to the corrugated box, as recited in claim 24. However, the Patent Office has failed to substantiate its theory through teachings found in the prior art. None of the references teach the motivation relied upon by the Patent Office.

For at least the same type of reasons discussed above in connection with the bag of claim 1, the insulated shipping container made according to the method recited in claim 24 is also not taught or suggested by the applied combination of references.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

Claims 19 and 25 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Lantz (‘017) or Lantz (‘764) in view of Grogan.” In support of the rejection, the Patent Office states the following:

Either Lantz discloses the invention except for inner box. Grogan teaches an inner box. It would have been obvious to add an inner box to protect the inside of the bag from being punctured by the contents placed within the shipping container.

Insofar as the foregoing rejection pertains to claim 19, the rejection is moot in view of Applicant’s cancellation herein of claim 19. Insofar as the foregoing rejection pertains to claim 25, Applicant respectfully traverses the foregoing rejection.

As noted above, the references of the rejection do not teach or suggest the use of the claimed bag.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

Claims 24 and 25 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Grogan in view of Lantz (‘017) or Lantz (‘764) and Langen.” In support of the rejection, the Patent Office states the following:

This rejection is made should it be deemed that the Lantz references do not sufficiently teach the uniform width of the bag over its entire length from its open end to its closed end.

Grogan discloses the invention except for the bag integrally bonded to the foamed polymer body and the uniform width of the

bag. Either Lantz teaches integrally bonding a bag to a foamed polymer body. It would have been obvious to add the integrally bonded bag to the foamed body in order to make the foamed polymer insulation easily separable from the boxes of the invention. Langen teaches a bag having uniform width over its entire length from the open end to the closed end as the edge of the seam extends at the same width over the entire length of the bag as shown in Fig. 15a. It would have been obvious to modify the width to be uniform to save the cost of trimming the seam.

For claim 24, it would have been obvious to secure a torn elongated plastic bag to the corrugated fiberboard box in order to prevent the bag from being separated from the box so that the box will always protect the bag from further puncture and the box will always have the polymer foam insulation attached to keep the box thermally insulated. Note that the outer box still remains separable.

Applicant respectfully traverses the foregoing rejection. As best understood by Applicant, the Patent Office is apparently contending that it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the Lantz bag with the Langen bag and then to bond the Langen bag to the Grogan foamed polymer body. Applicant respectfully disagrees for at least the reasons below.

First of all, there would have been absolutely no reason for one of ordinary skill in the art to substitute the Langen bag for the Lantz bag. The Langen bag is not taught to be useful for even a remotely related purpose to the Lantz bag, and nothing in Langen would have suggested its desirability for the purpose of the Lantz bag. Indeed, in view of the fact that Lantz stresses the desirability of eliminating folds and fissures caused by surrounding a foamed body with a plastic sheet and teaches that its tapered bag is a significant advance in achieving this objective, it is clear that there would have been a strong teaching away from substituting the Lantz bag with the Langen

bag as such a modification would have been *expected* to have precisely the result Lantz was seeking to avoid.

With respect to the Patent Office's comments regarding claim 24, Applicant submits that the Patent Office has provided no more than a theory as to why it may be obvious to secure the torn bag to the corrugated box. The Patent Office has failed to substantiate its theory through teachings found in the prior art. None of the references teach the motivation relied upon by the Patent Office. Moreover, the Patent Office has failed to explain why it would have been obvious to tear the plastic bag in the first place.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

Claim 25 stands rejected under 35 U.S.C. 103(a) "as being unpatentable over Lantz ('017) or Lantz ('764) in view of Grogan and Langen." In support of the rejection, the Patent Office states the following:

This rejection is made should it be deemed that the Lantz references do not sufficiently disclose the uniform width of the bag.

Either Lantz discloses the invention except for the inner box and the uniform width of the bag. Grogan teaches an inner box. It would have been obvious to add an inner box to protect the inside of the bag from being punctured by the contents placed within the shipping container. Langen teaches a bag having uniform width over its entire length from open end to closed end as the edge of the seam extends at the same width over the entire length of the bag as shown in Fig. 15a. It would have been obvious to modify the width to be uniform to save the cost of trimming the seam.

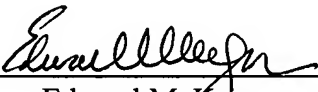
Applicant respectfully traverses the foregoing rejection for at least the same reasons given in the preceding rejection. Accordingly, the foregoing rejection should be withdrawn.

In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

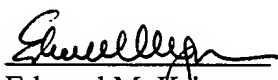
Respectfully submitted,

Kriegsman & Kriegsman

By: 
Edward M. Kriegsman
Reg. No. 33,529
665 Franklin Street
Framingham, MA 01702
(508) 879-3500

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 11, 2004.


Edward M. Kriegsman
Reg. No. 33,529
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